IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE

SECOND APPEAL NO. 103 OF 2003

Shri Izahar Hussain Wali Mohamed
& anr. ... Appellants

V/s

Trustees of Yogini Devi Public Trust
& ors. ... Respondents

Shri N.N. Shah for the appellants.

Shri V.P. Patil for the Respondent No.1.

Shri K.K. Tated for the Respondent Nos. 2, 3 & 4.

CORAM: P.V. KAKADE, J.

DATED: 18TH OCT., 2004.

P.C.:

1. Heard learned counsel for the appellants as well as respondent No.1 and respondent Nos. 2, 3 & 4. Perused the record.

2. This is an appeal filed by the appellants - plaintiffs against the judgment and order dated 14.12.2000 passed by the Addl. District Judge, Thane, dismissing their appeal and confirming the order of the Civil Judge, Jr. Divn., Bhiwandi dated 14.7.2000 in R.C.S. No. 527 of 1999 whereby the plaint came to be

rejected by virtue of Order 7 Rule 11-A of the C.P.C. and the suit was finally disposed of holding that it was barred by principles of res-judicata.

3. Defendant No.1 is a Public Trust holding suit lands and plaintiffs alleged that they are tenants in part thereof i.e. land being Survey No.60 admeasuring 40 Ares. According to the plaintiffs, they are in possession of the suit land since the year 1987 but in the year 1990, defendants 2 to 4 obstructed their possession and hence the suit was filed for declaration and possession. Defendants 2 to 4 appeared and resisted the suit contending that the suit was not maintainable as it was hit by Sec.11 of the C.P.C. because the substantial issues involved in the present suit were substantially and directly adjudicated in earlier suit between the same parties in R.C.S. No. 367 of 1990 and hence the plea that the suit is barred by principles of for res-judicata came to be raised.

The learned Trial Judge adjudicated the dispute by his order holding that the suit was barred by principles of res-judicata contemplated under Sec.11 of the C.P.C. It appears from the record that the advocate for the plaintiffs conceded that there was no cause of action

agitated as against defendants 2, 3 & 4 and, therefore, made submission that the plaint against defendants 2 to 4 be rejected. Consequently, the plaint was rejected by virtue of provisions of Order 7 Rule 11-A of the C.P.C.

4. The appeal was carried to the District Court, Thane. The learned Addl. District Judge, Thane, held on merits that the order passed by the learned Civil Judge was just, legal and proper and, as such, the appeal came to be dismissed. Hence the present appeal.

5. At the outset, it may be noted that the learned counsel for the appellant vehemently urged that an erroneous statement made by counsel in the course of argument cannot stop the client from taking the correct legal position afterwards. According to the learned counsel, this is the substantial question of law which is sought to be agitated in the second appeal. However, perusal of the entire record shows that not only the advocate for the plaintiffs made statement in the Trial Court that there was no cause of action so far as defendants 2 to 4 were concerned, but both the Courts below have again examined the issue independently and have come to the conclusion that, in fact no cause of action was agitated and had arisen and, therefore, the

plaint came to be rejected by virtue of Order 7 Rule 11-A of the C.P.C. Similarly, independent assessment of the entire record is sufficient to show that the suit is barred by the principles of res-judicata in view of the findings recorded in R.C.S. No. 367 of 1990 filed by the plaintiffs and it was between the same parties and all issues sought to be raised in the present suit are finally decided in the said earlier suit and, therefore, there is clear bar of Sec. 11 of the C.P.C.

6. In view of this position, the ratio laid down by the Supreme Court in the case of **Kondiba Dagadu Kadam v/s Savitribai Sopan Gujar, reported 1999 SCC 2213,** would be necessarily invoked. The Apex Court has categorically laid down that the conditions under Sec.100 of the C.P.C. must be directly fulfilled before a second appeal can be maintained and no Court has power to add or to enlarge those grounds. The concurrent findings of facts, whatsoever erroneous cannot be disturbed by the High Court in exercise of its power under Sec.100 of the C.P.C. therefore, I have no doubt whatsoever that both the Courts below have rightly concluded that the plaint deserves to be rejected for want of cause of action against the defendants 2, 3 & 4 and was also barred by principles of res-judicata.

7. Before concluding, I must note that the affidavit filed on behalf of the respondent No.2 in accompanying Civil Application No. 120 of 2003 throws disturbing light on the entire situation involved in this dispute. It is clear from the record that the present appellants have filed numerous litigations against the respondents taking advantage of the fact that the respondent No.1 is a Public Trust holding large landed property and various proceedings moved on behalf of the appellants which resulted against them and inspite of this situation again this suit came to be filed. It was stated at the bar on behalf of the respondents that the present appellants also sought to move State Human Rights Commission against the respondents to seek redressal while the matters were pending before the Court. In short, I am quite satisfied that the appellants are in the habit of filing frivolous proceedings against the defendants for which purpose the learned Trial Judge has rightly imposed compensatory cost on the appellants - plaintiffs.

With these observations, I hold that there is no merit in the appeal and, therefore, it deserves to be dismissed and stands dismissed in limine.

Consequently, the civil application also stands dismissed with no order as to costs.

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